

ENTERED

November 04, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

IRVING BEO,

Plaintiff,

VS.

CENAC MARINE SERVICES LLC, *et al*,

Defendants.

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CIVIL ACTION NO. 3:15-CV-125

**ORDER ADOPTING MAGISTRATE'S REPORT AND
RECOMMENDATION AND OVERRULING OBJECTIONS**

Pending before the Court is the Report and Recommendation of United States Magistrate Judge John Froeschner, and the Objections filed by Defendant.

Irving Beo filed this Jones Act lawsuit on May 27, 2015. Beo alleges he was a deckhand on the *M/V Fritz Cenac*, and he was injured due to the negligence of Defendants and unseaworthiness of the vessel while the vessel was operating in navigable waters. (Dkt. 1).

Defendants Cenac Marine and CTCO Benefits have filed a motion for partial summary judgment, asking the Court to dismiss Beo's maintenance and cure claim "for his back and his neck," and to find that Beo has reached maximum medical improvement on his right leg and that he abandoned medical treatment soon after his alleged injury. (Dkt. 19).

The Court referred the motion to Judge Froeschner on September 12, 2016. (Dkt. 26). Judge Froeschner issued his Report and Recommendation on October 4, 2016. (Dkt. 27). Judge Froeschner's Report and Recommendation found that Defendant's motion for partial summary judgment should be granted as to Beo's claim for maintenance and cure on his

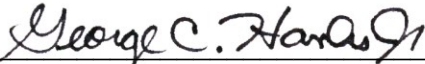
back injury, but that the motion should be denied as to Beo's claim for his neck injury, as well for the Defendant's contention that Beo had reached maximum medical improvement and had abandoned medical treatment.

Defendants have filed Objections to certain parts of the Report and Recommendation. (Dkt. 28). This Court must conduct a *de novo* review of any of the Magistrate Judge's conclusions to which a party has specifically objected. *See* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.").

Defendant's Objections appear to be based upon their belief that the particular phrasing Magistrate Judge Froeschner used in the Report and Recommendation will constitute the law of the case going forward, and they worry that they may be prejudiced at trial if they do not object now to Judge Froeschner's particular choice of words and recommendation that the motion for summary judgment be denied in part and granted in part. The Court will remain mindful of the distinct evidentiary burdens and rules that differentiate trial from summary judgment practice.

Accordingly, Defendant's Objections are **OVERRULED**, and the Report and Recommendation of the Magistrate Judge on Defendant's Motion for Partial Summary Judgment is **ADOPTED**. Defendant's motion for summary judgment is **GRANTED** in part, and **DENIED**, in part, as stated in the Report and Recommendation.

SIGNED at Galveston, Texas, this 4th day of November, 2016.



George C. Hanks Jr.
United States District Judge